

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:14-CR-14-D-1

UNITED STATES OF AMERICA

v.

HARRY C. MANN

NOTICE OF INTENT
TO OFFER EVIDENCE OF
A PUBLIC-AUTHORITY DEFENSE

Fed. R. Crim. P. 12.3

The Defendant, by and through counsel, hereby requests leave of the Court to file this notice out of time, and gives notice of his intent to offer evidence of a public authority defense. In support of this request and notice, Mr. Mann shows the Court the following:

1. Mr. Mann worked at the Dare County Bombing Range since it opened in the mid-1960s.
2. Mr. Mann was a civil service employee, and his supervisors were members of the United States Navy.
3. Throughout his tenure, Mr. Mann's superiors repeatedly asked and authorized him to dispose of bombed-out and other refuse on the range at no cost to the Navy.
4. For example, Exhibit 1 is a letter dated March 6, 1997, that gives Mr. Mann "permission to dispose of all salvage resulting from the demolition [of a scoring tower on the range] and any other waste salvage in the vicinity." The letter continues, "Mr. Mann may utilize the value of said materials as payment for hauling it away as long as there is no profit for any employee or immediate relative of any NDBR employee involved."

5. Exhibit 2 is an excerpt from a government agent's grand jury testimony in which the agent confirmed that Mr. Mann received permission to dispose of refuse through local businessmen.

* * *

1 GRAND JUROR: So was there an
2 amount, a dollar amount, that was agreed upon? I mean,
3 they were trying to save money, but it was obviously
4 going to cost something to remove it.
5 THE WITNESS: What Mr. Mann said --
6 again, Mr. Mann didn't provide this, but the Commander
7 who we spoke to said he remembered Mr. Mann contacting
8 him and saying, "There's a piece of equipment outside
9 the range that's big, it's bulky, it's going to cost
10 too much to have DRMO come and do it the right way; can
11 I just get a local guy to come remove it, he won't
12 charge us anything, and it'll save us the cost of
13 having DRMO come?"
14 So his Commander said, "Okay, as
15 long as you or he don't make any profit, go ahead."
16 GRAND JUROR 2: It's like a slam
17 dunk to the Commanding Officer then.

6. In light of Exhibit 1, it appears that the agent misspoke when saying that no one could profit from such operations (second excerpt, line 15 above).

7. A number of other commanding officers provided similar authorizations to Mr. Mann, asking him to dispose of scrap metal at no cost to the Navy.
8. Mr. Mann submits notice of his intent to rely on the public authority defense to the extent that he may rely on the above-described authorizations to dispose of the refuse on the range in any manner as long as Mr. Mann did not “profit.”
9. Mr. Mann had such authority at least as early as 1997 and continuing through May 2011.
10. Upon information and belief, this authority was provided by his supervisors at the United States Navy, including Renvyle, Kervahn, Hill, Finco, Bisaillon, and others.

Respectfully submitted, this the 7th day of November, 2014.

CHESHIRE PARKER SCHNEIDER &
BRYAN, PLLC

/s/ Elliot S. Abrams

Elliot S. Abrams
N.C. State Bar # 42639
133 Fayetteville Street, Ste 500
P. O. Box 1029
Raleigh, NC 27602
(919) 833-3114 (TEL)
(919) 832-0739 (FAX)
elliot.abrams@cheshirepark.com

TARLTON LAW, PLLC

/s/ Raymond C. Tarlton

Raymond C. Tarlton
N.C. State Bar# 38784
333 Fayetteville St., Ste. 1513
P.O. Box 1386
Raleigh, NC 27601
tarlton@tarltonlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing NOTICE OF INTENT TO OFFER EVIDENCE OF A PUBLIC-AUTHORITY DEFENSE through the electronic service function of the Court's electronic filing system, as follows:

Susan Menzer (susan.menzer@usdoj.gov)
Assistant United States Attorney
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, NC 27601-1461

This the 7th day of November, 2014.

TARLTON LAW PLLC

/s/ Raymond C. Tarlton

Raymond C. Tarlton
N.C. State Bar # 38784
333 Fayetteville Street, Ste 1513
Raleigh, NC 27602
(919) 890-3079 (TEL)
(919) 400-4200 (FAX)
tarlton@tarltonlaw.com